

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-208555.2**

**DATE: December 27, 1982**

**MATTER OF: Las Piedras Construction Corporation**

**DIGEST:**

A bid that includes a bid bond listing a surety company that underwent a merger and subsequent change of name and at its own insistence was removed from Treasury Circular 570, under the apparent belief that it would be listed on the Circular in its new name, but at the time of bid opening was not yet on the list need not be rejected. For all practical purposes the surety company was one entity doing business under two names and Treasury's approval of the surety was made retroactive to a date prior to bid opening.

Las Piedras Construction Corporation (Las Piedras) protests the Department of the Army, Corps of Engineers (Army), decision to award a contract for dredging work to Construcciones Jose Carro, Inc. (Jose Carro), under invitation for bids No. DACW17-82-B-0024. Bid opening was on July 7, 1982. The Army is holding up the award pending our decision.

We deny the protest.

The solicitation required a bid bond to be submitted with the bid. Jose Carro's bid bond listed Potomac Insurance Company of Philadelphia as surety, and the bond was executed for the surety by Abdon Martinez, who represented himself as attorney-in-fact. The crux of Las Piedras' protest is that this bid bond was deficient. The facts are not disputed.

Effective December 31, 1981, Potomac merged with General Accident Fire & Life Assurance Corporation Limited of Perth, Scotland, and the new company changed its name to General Accident Insurance Company of American (GAI). At the same time GAI authorized Abdon Martinez, to act as its attorney-in-fact. Soon after, GAI wrote to the United States Treasury Department requesting that Potomac's authority to write Federal bonds be terminated and that GAI be authorized to do so instead. As a result of this request, Potomac's name was removed from the Treasury's list of

acceptable sureties on Federal bonds (as listed in Treasury Circular 570) as of July 1, 1982. Thereafter, on August 23, 1982, Treasury published a notice in the Federal Register (47 Fed. Reg. 36747) that a certificate of authority as an acceptable surety on Federal bonds was issued to GAI on August 16, 1982, retroactive to January 1, 1982.

Based on the above, the protester argues that Jose Carro's bid is nonresponsive because its listed surety, Potomac, was (1) a company that no longer existed on the date of bid opening (2) was no longer listed on Circular 570, and (3) the party signing the bid bond was not an agent of Potomac but rather of GAI.

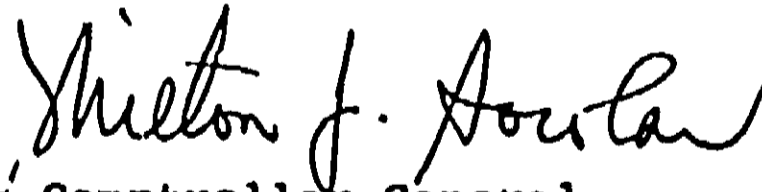
In support of its position the protester points to our holding in Ron Grove's Heating, Air Conditioning, and Piping, B-198687, May 23, 1980, 80-1 CPD 360. In that case a bid was rejected by the agency because the surety on the accompanying bid bond was not listed in Circular 570. The bidder argued that it should have been allowed to substitute a listed surety for the unlisted surety particularly since the listed surety it proposed as a substitute was a wholly-owned subsidiary of the unlisted surety. We held that the subsidiary and parent were two different legal entities and that the substitution of sureties could not be allowed after bid opening as it involved the responsiveness of the bid.

Here, however, we are not dealing with two different legal entities. Rather, the record shows that Potomac and GAI really are the same legal entity doing business under two names. A corporation can, just as an individual, carry on business under a name other than its legal name without affecting its legal obligations. See 6 Fletcher, Cyclopedia of the Law of Private Corporations §§ 2442, 2442.1 (rev. perm. ed. 1979), cited with approval in Miami Credit Bureau, Inc., v. Credit Bureau, Inc., 276 F.2d 565 (5th Cir., 1960). The facts submitted by the Army show that subsequent to Potomac's merger, Potomac's agents continued to issue bonds in the name of Potomac. In addition, GAI treated these bonds as if they were issued in its own name. For example, on February 11, 1982, the Board of Directors of GAI passed a resolution ratifying all corporate actions performed by GAI's agents or officers acting on behalf of GAI under the name of Potomac. Abdon Martinez, an agent of GAI, clearly was acting in that capacity when he issued a bond in connection with Jose Carro's bid in the name of Potomac.

We recognize that the evidence to show Potomac's identity with GAI was obtained by Army after bid opening. But we have held that evidence to show the sameness of a principle named in a bid and a different named principle in the accompanying bid bond may be submitted after bid opening if the evidence was publicly available prior to bid opening. Jack B. Imperiale Fence Company, B-203261, October 26, 1981, 81-2 CPD 339; K-W Construction, Inc., B-194480, June 29, 1979, 79-1 CPD 475. We see no reason to follow a different rule to establish sameness of identity between a surety named in a bid bond and another surety.

The remaining question is whether the absence of either Potomac's or GAI's name on the list of approved sureties on the date of bid opening makes Jose Carro's bid nonresponsive. We think not. The purpose of requesting that the surety be listed on Circular 570 is to protect the Government. Ron Grove's Heating, Air Conditioning, and Piping, supra. In this case it is clear that GAI's absence from the list at the time of bid opening was because of Treasury's processing of GAI's application due to the change in names. The fact that Treasury then listed GAI retroactively to January 1, 1982, when the corporate merger and change of name took place, indicates that for all practical purposes GAI/Potomac should be regarded as an eligible surety in accordance with Treasury's retroactive listing. We agree with the Army, therefore, that Jose Carro's bid bond is acceptable.

Protest denied.

*for*   
Comptroller General  
of the United States

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